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13 years of enforced disappearance of Attorney Somchai No law to criminalize enforced disappearance in Thailand Failure of the state to protect people's right to life

A human rights lawyer, Mr. Somchai Neelapaijit was made disappeared on 12 March 2004. Clear evidence suggested that more than five police officials were involved with the disappearance. 13 years past, his whereabouts are still unknown and no one is sure if he is still alive. The search for truth and the struggle for justice of his family has been plagued with obstacles since Thailand has no law to criminalize enforced disappearance. The prosecutions against suspects in such cases have been made invoking the existing criminal laws which do not specifically address the nature of the crime. The suspects in this case were indicted under the Penal Code's Articles 309 and 310 for "being complicit in compelling the other person to do or not to do any act, or to suffer any thing by putting him in fear of injury to life, and body so that he does or does not do such act", the crime of which did not correspond directly to the offence which has been actually committed and the intent to the offence involving the enforced disappearance against Attorney Somchai.

Such legal restriction has hampered the effort by the family of the victims in many ways including their not being aware of the whereabouts of the victim who has disappeared for many years. According to the civil law, it could be assumed that Mr. Somchai has died and likewise the Civil Court ruled that he had disappeared per Section 61 of the Civil and Commercial Code. But the ruling of the Court had no bearing when Mr. Somchai's family invoked it as evidence to support their request to become a co-plaintiff in the criminal suit indicted against the police officials.

Moreover, the Criminal Court claimed that his wife and children have not been able to prove that that Mr. Somchai has fatally been abused or injured until he was unable to become a co-plaintiff himself per the Criminal Procedure Code. The ruling was so unfair since in most cases the officials involved with enforced disappearances would attempt to cover up any traces of such disappearance in order to conceal their guilt. It would be almost always impossible for the families of the disappeared to prove that they have already been fatally attacked.

An act of enforced disappearance is a special crime by its nature. The officials involved would intend to cover up their actions. By using ordinary criminal law to prosecute suspects in such crime would make it hard for the victims and the families to attain justice. In addition, such offences are committed by the government officials who have abused their power to commit such crime and it is a crime by the state. The offences are made possible by the authorities who have knowledge in both the law and the justice process. In order to hold to account the suspects in such cases, special laws are warranted. Otherwise, the perpetrators would exploit the legal loopholes and enjoy impunity given that the existing justice process cannot be a tool to effectively bring the perpetrators to justice. Therefore, it is utmost important to have a specific law to criminalize the act of enforced disappearance and a procedure that fits the nature of the crime.

Enforced disappearance is the most severe form violation of human rights and a heinous crime according to international law, particularly the International Convention for the Protection of all Persons from Enforced Disappearance. The state should not allow such crime to continue unabated regardless of any circumstances, reasons, excuses or other reasons. Nevertheless, the Cross Cultural Foundation (CrCF) has found enforced disappearance continues to exist in Thailand. Apart from the case of Mr. Somchai, on 17 April 2014, a Karen community leader, Mr. Pholachi Rakchongcharoen aka "Billy", was held in custody by the government officials. On 16 April 2015, a land right activist, Mr. Den Kamlar, has also been made disappeared. On 24 January 2016, a former convict in security-related case in the Deep South of Thailand, Mr. Fadel Saomahn, was forced into a vehicle by three young men and disappeared. Investigations and the efforts to track down these people have yielded no result and no one has been brought to justice. Until now, their whereabouts are still unknown. That Thailand still has no law to criminalize enforced disappearance indicates how the state has failed in the protection of right to life.

CRCF is gravely concerned that the Draft Act for the Prevention and Suppression of Torture and Enforced Disappearances B.E....which has already approved by the cabinet and pending the read in the National Legislative Assembly (NLA) has still not been deliberated by the NLA. Instead, the draft law has been sent back to the Ministry of Justice, the in-charge agency, and no explanation has been publicly made while a lack of transparency reigns. The draft law has been made possible by the effort of various government agencies in consultation with civil society organizations and human rights organizations, nationally and internationally as well as the UN Office of the High Commissioner for Human Rights (UNOHCHR). Apart from having been reviewed by representatives from various agencies and organizations, the draft law has been discussed during several public hearings. It has been made possible through industrious effort and immense amount of time devoted to by various parties.

Even though on 10 March 2017, the National Legislative Assembly (NLA) agreed that the government should proceed to ratify the International Convention for the Protection of All Persons from Enforced Disappearance as proposed by the cabinet, but since the National Council for Peace and Order (NCPO) has failed to enact the laws in compliance with or to enable clauses in the Convention, by becoming a state party to the Convention, it would not do much service to the effort to prevent and suppress the crime of enforced disappearance committed by the government officials or with the acquiescence of the officials. It could be said that the NLA has foiled the chance to promote and protect such human right by not proceeding to read and endorse the Draft Act for the Prevention and Suppression of Torture and Enforced Disappearances without considering the importance to protect the right to life and public interest.

CRCF, therefore, calls on the government and the Ministry of Justice to expedite the process to enact the Draft Act for the Prevention and Suppression of Torture and Enforced Disappearances in compliance with international standards. Enforced disappearance must promptly be criminalized by domestic law to materialize the pledge Thailand has given to international community during the Thailand's National Universal Periodic Review (UPR).

In addition, there are laws, regulations, and orders which provide for or may give rise to the torture and enforced disappearance against a person including the holding in custody of a person in incommunicado detention in an undisclosed location, the barring of access to lawyer, medical personnel, or relatives, or by not bringing the person for arraignment at the Court by invoking the Head of NCPO Order No. 3/2558 and Martial which allows detention up to seven days, the Emergency Decree which allows detention up to 30 days, the Narcotics Control Act which allows detention up to three days, etc. But when it can be established that such enforced disappearances including the arrest, the deprivation of liberty, the abduction, or

other methods have been committed by an agent of the state or by a person or a group of persons at the instigation of or with the consent or acquiescence of a public official and the state refuses to acknowledge such act or by concealing the whereabouts and destiny of the person which has excluded the person from the protection of the law, such concerned officials should then face disciplinary and criminal investigation fairly without conceding to the influence of any person in order to effectively do away with the culture of impunity.

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